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★ JAN 17 2018 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LONG ISLAND OFFICE

-----X
MICHAEL DESMOND,

Plaintiff,

-against-

VERIFIED COMPLAINT AND
JURY DEMAND

ECLERX, ECLERX LLC d/b/a ECLERX,
ECLERX SERVICES LIMITED, and
AGILYST INC.,

Defendants.
-----X

Docket No. **CV18 0313**
AMON, J.
J. ORENSTEIN, M.J.

Plaintiff, MICHAEL DESMOND, as and for his Complaint against the Defendants, alleges
as follows:

JURISDICTION AND VENUE

1. This is a civil action for damages brought pursuant to the Employee Retirement Income and Security Act, 29 U.S.C. 1001, et seq. ("ERISA") . Jurisdiction is invoked pursuant to 29 U.S.C. section 216(b) and 28 U.S.C. section 1331, relating to "all civil actions arising under the Constitution, laws, or treaties of the United States," and 28 U.S.C. section 1337, relating to "any civil action or proceeding arising under any Act of Congress regulating commerce."
2. The Defendants engage in substantial business and have substantial contacts within the Eastern District of New York , and venue in this Court is proper in accordance with 28 U.S.C. 1391(d).

NATURE OF ACTION

3. This is a civil action for recovery of damages for the Defendant's breach of fiduciary duties, including the refusal to provide the Plaintiff with reasonable information concerning his coverage by a group disability insurance policy.

PARTIES

4. The Plaintiff, MICHAEL DESMOND, is an individual residing at 54 Clay Pitts Rd., Greenlawn, County of Suffolk, New York.

5. Upon information and belief, the Defendant, ECLERX, is a company having a principal location for the conducting of business at 286 Madison Avenue, New York, New York.

6. Upon information and belief, the Defendant, ECLERX, LLC is a limited liability company having a principal location for the conducting of business at 286 Madison Avenue, New York, New York, and doing business as ECLERX.

7. Upon information and belief, the Defendant, ECLERX SERVICES LIMITED, is a foreign corporation that is based in Mumbai, India, but which has a principal location for the conducting of business at 286 Madison Avenue, New York, New York.

8. Upon information and belief, the Defendant, AGILYST INC., is a Texas corporation having a principal location for the conducting of business at 286 Madison Avenue, New York, New York.

FACTS GIVING RISE TO THE CAUSES OF ACTION

9. The Defendants maintained and managed at all times relevant an "employee welfare benefit plan" in accordance with 29 U.S.C. 1002,

10. The Plaintiff was employed by the Defendants in or about August 2013 as a Program Manager, and was an “employee” pursuant to 29 U.S.C. 1002.

11. As an employee of the Defendants, the Plaintiff was enrolled as a “participant” in the Defendants’ employee benefit plan, and was covered under an employee welfare benefit plan for disability insurance, including long term and short term disability, and health insurance.

12. On or about January 20, 2015, the Plaintiff became disabled while an employee of the Defendants and a participant in the employee benefit plan described above when he suffered from Corneal Abrasions and Sjograns Disease, which caused the Plaintiff to become legally blind.

13. Although the Plaintiff was an employee of the Defendants and a participant in the employee benefit plan at the time that he became disabled as a result of Corneal Abrasions and Sjograns Disease, the Defendants falsely informed the Plaintiff that he was not a participant in the employee benefit plan, and falsely informed him that he was not covered or eligible to receive benefits under the disability plan, and refused to provide the Plaintiff with a copy of a Summary Plan Description or of the Plan.

14... As a result of the Plaintiff’s disability, as described above, he became entitled to and eligible for disability benefits under the Defendants’ Employee Benefit Plan.

15. Even though the Plaintiff requested information concerning the Employee Benefit Plan of which he is a Participant, the Defendants failed and refused to provide the Plaintiff with information and documents that would afford the Plaintiff an opportunity to submit a claim as a Participant in the Employee Benefit Plan, thereby preventing the Plaintiff

from applying for and receiving disability benefits to which he was entitled and for which he was eligible under the Employee Benefit Plan.

16. By the above-described conduct, and by failing to enable the Plaintiff to obtain the disability benefits promised to him, and to which he was entitled and which were recoverable by him under the terms and provisions of the Employee Benefit Plan, the Defendants breached their fiduciary duty owed to the Plaintiff and wrongfully denied benefits to him.

17. The Defendants above-described conduct was willful and in bad faith.

18. By reason of the foregoing, the Plaintiff was deprived of disability benefits to which he was, and is, entitled.

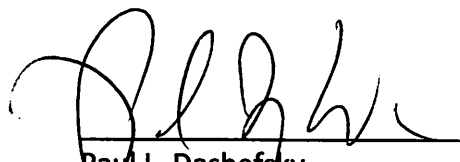
19. But for the Defendants' above-described conduct, the Plaintiff would have applied for and received the wrongfully denied benefits described herein

20. Plaintiff demands a trial by jury for all claims.

WHEREFORE, the Plaintiff demands judgment against the Defendants for a sum to be determined at trial for lost and denied benefits, together with prejudgment interest, fines at the rate of \$100 a day for failure to provide information to the Plaintiff concerning the Benefit Plan, costs, interests and attorneys' fees, and such other relief as to the Court seems just.

TRIAL BY JURY IS DEMANDED

Dated: Smithtown, New York
January 16, 2018



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